IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

ST.Rev..No. 124 of 2007()

TA.466/2003 of S.T.A.T.ADDL.BENCH,ERNAKULAM
.....

REVISION PETITIONER/ASSESSEE/APPELLANT:

SAPNA POLYWEAVE LTD.,
39/2774, ILLOM ROAD, KOCHI-16.

BY ADV. SRI.SUNIL JACOB JOSE

RESPONDENT: REVENUE/RESPONDENT

STATE OF KERALA,
REPRESENTED BY IT'S FINANCE SECRETARY,
SECRETARIAT, TRIVANDRUM.

BY SPL.GOVT.PLEADER (TAXES) SRI V.V.ASHOKAN

THIS SALES TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev. Case No.124 of 2007

Dated, this the 30th day of May, 2007

ORDER

H.L.Dattu, C.J.

This revision petition is filed against the orders passed by the Kerala Sales Tax Appellate Tribunal in T.A.No.466/2003 dt. 24.1.2005 communicated to the assessee on 2.2.2007. By the impugned order the Tribunal has rejected the appeal filed by the petitioner against the orders of assessment passed by the Assessing Authority for the assessment year 1998-99.

2. In the memorandum of revision petition the assessee has raised the following questions of law for consideration and decision of this court. They are as under:

> "A. Has not the Tribunal erred in finding that the business loss accounted is not supported with documentary evidence.
>
> B. Has not the Tribunal failed to examine the explanation of the Revision Petitioner for projected loss, independently?
>
> C. Whether the Tribunal is justified in sustaining the addition made in the sales turnover in the absence of any specific case of sales suppression or purchase suppression.
>
> D. Has not the Tribunal erred in sustaining the defects and rejection of returns and books of accounts on the basis of mere guess work of the lower authorities, without having any yard stick for making estimation."

3. Sec.41 of the Kerala General Sales Tax Act reads as under:

"Revision by the High Court:- (1) Any officer empowered by the Government in this behalf or any other person who objects to an order passed by Appellate Tribunal under sub-section (4) or sub-section (7) of Section 39 may, within ninety days from the date on which a copy of such order is served on him in the manner prescribed, prefer a petition to the High Court on the ground that the Appellate Tribunal has either decided erroneously or failed to decide any question of law:

Provided that the High Court may admit a petition preferred after the period of ninety days aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within the said period.

(2) The petition shall be in the prescribed form and shall be verified in the prescribed manner and where it is preferred by a person other than an officer empowered by the Government under sub-section (1) it shall be accompanied by a fee of two hundred and fifty rupees.

(3) If the High Court, on pursuing the petition, considers that there is no sufficient ground for interfering, it may dismiss the petitions summarily:

Provided that no petition shall be dismissed unless the petitioner has had a reasonable opportunity of being heard.

(4) (a) If the High Court does not dismiss the petitions summarily, it shall, after giving both the parties to the petition a reasonable opportunity of being heard, determine the question of law raised and either reverse, affirm or amend the order against which the petition was preferred or remit the matter to the Appellate Tribunal with the opinion of the High Court on the question of law raised, or pass such order in relation to the matter as the High Court thinks fit.

(b) Where the High Court remits the matter under Clause (a) with its opinion on the question of law raised, the Appellate Tribunal shall amend the order passed by it in conformity with such opinion.

(5) Before passing an order under sub-section (4) the High Court may, if it considers it necessary so to do, remit the petition to the Appellate Tribunal, and direct it to return the petition with its finding on any specific question or issue.

(6) Notwithstanding that a petition has been preferred under sub-section (1), the tax shall be paid in accordance with the order against which the revision has been preferred:

Provided that the High Court may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the petition, if the petitioner furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.

(7) (a) The High Court may, on the application of any party to a revision under this section review, any order passed by it on the basis of the discovery of new and important facts which after the exercise of due diligence were not within the knowledge of the applicant or could not be produced by him when the order was made.

(b) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed and, where it is preferred by any person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee of two hundred and fifty rupees.

(8) If, as a result of the revision or review, any change becomes necessary in any assessment, the High Court may direct the assessing authority to amend the assessment accordingly, and on such amendment being made any amount over-paid by any person shall be refunded to him, or the further amount of tax from him shall be collected in accordance with the provisions of this Act, as the case may be.

(9) The cost of a revision under sub-section (1) or of a review under sub-section (7) shall be in the discretion of the High Court."

This Court gets jurisdiction to entertain a revision petition only if the Tribunal has erroneously decided a question of law or has failed to decide a question of law.

4. In the instant case the questions of law framed by the assessee can never be construed as questions of law and they are purely questions of fact. In that view of the matter we cannot entertain this revision and accordingly it requires to be rejected and it is rejected. The assessee/petitioner is granted two months' time from today to pay the dues under the Act for the assessment year 1998-99 . Ordered accordingly.

(**H.L.DATTU)**
Chief Justice

(K.T.SANKARAN)
Judge

mt/-